

Florence - Direct

91

1 those that we were able to analyze.

2 Q What about people who said that they were relying upon
3 evidence other than an X-ray, did you exclude them from the
4 analysis?

5 A No. Those were assumed to pass at the same rate that the
6 people with X-rays passed.

7 Q What about people who said that they were relying on
8 X-rays, but then neither supplied them nor provided the
9 certification that they were lost or destroyed, what did you do
10 with those folks?

11 A Those folks were excluded.

12 Q And on what grounds?

13 A That there was no X-ray evidence and so if the rule was
14 that there was a reproducible X-ray required, there was no way
15 to make that real.

16 Q Okay. I want to go back for a moment to the slide that
17 you had 2318 and you said in a couple of different places, both
18 with respect to other cancers and non-malignants that there was
19 a screen done first of all to determine whether there was
20 sufficient data to even analyze for laryngeal or analyze for
21 non-malignant. Do you recall that?

22 A I do.

23 Q What about the people that had said they had the disease
24 or fell into one of these categories, but where there was
25 insufficient data on the basis of which to determine whether

Florence - Direct

92

1 their claims met the criteria or not, how did you deal with
2 them, the insufficient data people?

3 A So you're saying the people that -- of the work, for
4 example using other cancer?

5 Q Yes.

6 A That group of 133 minus the 105.

7 Q That's correct. That is, the people who didn't have the
8 sufficient data, how were they factored in, if at all?

9 A We said that the group that did not respond would, in
10 essence, in one of our estimates would qualify at the same
11 weight as those that did respond whether it was sufficient
12 information.

13 Q Do you have a demonstrative in 2323 that illustrates the
14 basic approach that was taken with respect to people who --
15 where there was not sufficient data?

16 A Yes.

17 Q Could you just walk the Court through what was done to
18 account for the people -- the two different methods that were
19 used to account for the people who did not provide sufficient
20 data?

21 A Well if you look under the data category you see that
22 there is a group of people that did not provide sufficient
23 information for which to evaluate the claim, on one or more of
24 these criteria. And then there was a group where the
25 information was there that was necessary to evaluate the claim.

Florence - Direct

93

1 If you look at the bottom of that chart, there was a certain
2 group of claimants that met the criteria and a certain group of
3 claimants that did not meet the criteria. So for what we've
4 called Method 1, we said well that's one measure of how many
5 people would meet these criteria.

6 Q So, these are met or did not meet, and if you did not meet
7 or if you didn't have sufficient data you just tell me how were
8 they counted?

9 A So we would basically say that the group that met the
10 criteria is the only group that would meet the criteria. So
11 non-sufficient to evaluate plus it did not meet, would fall
12 into the eliminate -- an eliminated category.

13 Q What about Method 2, what was done in Method 2?

14 A In Method we basically said we thought as an upper bound
15 we should look at the possibility that the people that did not
16 respond, what would happen if they looked like the people that
17 did respond. In other words, those people that had sufficient
18 information to evaluate, what if the people that did not
19 provide information were able to qualify at the same rate?

20 Q So you take the ratio of qualified versus not qualified
21 and now apply it to the insufficient data group?

22 A That's correct.

23 Q And then you have to then add the two together?

24 A We use both methods, correct.

25 Q Now as your analysis continued going forward did you carry

*

Florence - Direct

94

1 that through the analysis; that is, including both cases the
2 Method 1 approach and the Method 2 approach.

3 A We did. Wherever there was a criteria that was applied,
4 where it was possible to do that, we estimated both the number
5 of claimants that met the criteria clearly and then estimated
6 the number of claimants that if they had, even though they
7 provided insufficient information, if they had qualified at the
8 same rate as those that provided information what number of
9 claimants that would imply. So there was a Method 1 and 2 that
10 we've used throughout the analysis.

11 Q Does 2324 reflect the application of that method to other
12 cancer?

13 A It does.

14 Q And does 2325 do the same thing for non-malignant disease?
15 Showing 2325.

16 A It does, yes.

17 Q Okay.

18 A For the medical -- these medical criteria, correct.

19 Q Showing you 2322, does this now reflect the total number
20 of claims that emerge once you've got your knowns plus your
21 allocation of unknowns and then apply the medical criteria
22 according to the two different methods where it's appropriate,
23 does 2322 summarize the total number of matched POC claims that
24 pass the medical criteria tests?

25 A It does.

Florence - Direct

95

1 Q And does this accurately reflect that?

2 A It does, yes.

3 MR. BERNICK: Let's go to the exposure criteria which
4 will then take us to total currents and maybe that would be an
5 appropriate time for a break, Your Honor. I don't know.

6 THE COURT: Give me a second please.

7 (Pause)

8 THE COURT: Okay, thank you.

9 Q Let's now talk about the exposure criteria. Do we have a
10 similar slide that relates to the exposure? Well let's begin.
11 To do the exposure analysis, were you able to work with the
12 total number of claims in each disease category matched to
13 POCs, or did you work with some other group?

14 A Well, since a claimant has to meet both the medical
15 criteria and the exposure criteria, then we really had to look
16 at for exposure purposes that subset of people that meet the
17 criteria in order for it to be -- in order for it not to run
18 into problems with estimating these probabilities.

19 Q 2326, tell us whether or not this reflects the groups of
20 claims that were then evaluated for exposure, the exposure
21 criteria?

22 A It does. It represents the groups that were evaluated.
23 In fact I think if you notice it, these are the same numbers
24 that appear on 2318.

25 Q The right-hand column?

Florence - Direct

96

1 A The final column of 2318. Those are people that met those
2 criteria.

3 Q Showing you 2327, does this chart reflect how the exposure
4 categories were applied?

5 A It does.

6 Q Could you walk us through the different steps that were
7 involved in applying the exposure categories from Dr.
8 Anderson's work?

9 A If you notice each -- there are four segments to the chart
10 for each disease type and you see "Group Reviewed" is the first
11 column so for mesothelioma there were 1596 claims that met the
12 medical criteria that were reviewed, and all of these were
13 reviewed by Exponent.

14 Q Okay. Now it says sufficient data. Were there sufficient
15 data to do an exposure review with respect to all 1596 mesos?

16 A No, there wasn't. So there's only a group of these and in
17 the case of mesos there were only 534 claims where there was
18 sufficient data to do an evaluation of whether the exposure
19 criteria were met.

20 Q Do we see the same basic analysis done for lung cancer,
21 other cancers and non-malignants?

22 A That's correct.

23 Q Now, you then say who actually did the exposure review;
24 you've got Exponent and you've got the criteria. They had to
25 be As or Cs and the Court has already heard more than enough

Florence - Direct

97

1 about those. Again were these assumptions that you made; that
2 is, you assumed the accuracy of the Exponent data and you
3 assumed the application that they properly applied the exposure
4 categories?

5 A We did, yes.

6 Q Okay. Now tell us what we see in the last two columns
7 under "Claims that pass".

8 A Well if you look under -- the last two columns this
9 concept that I described earlier of Method 1 and Method 2. So
10 that is, what's the rate at which people qualify of those that
11 provided -- of those that we could judge? And then also what's
12 the rate at which people qualified for those that provided
13 information? So what you see here is the number of people of
14 the claims that can be evaluated, the 534 that had sufficient
15 information, 102 were found to pass the criteria that is judged
16 by Exponent, and that 102 is roughly 6.4 percent of the 1596
17 claims that were evaluated.

18 In Method 2 remember we said that, when we
19 calculating a rate those claims, that only those claims had
20 sufficient information and apply that rate to all the claims.
21 And so in Method 2 what you see there is, it is the 102 claims
22 that met the criteria divided by 534 claims; that is, the
23 number of meso claims that had sufficient information. That
24 gives you a rate of 19.1 percent for Method 2.

25 Q Does 2327 accurately summarize the data and the pass rates

Florence - Direct

98

1 that emerged from the exposure review?

2 A It does, yes.

3 Q Now we are -- you've pointed out that this review is done
4 only of certain groups. How did you get from this analysis
5 back to all of the people who passed the medical review -- all
6 the people that passed the medical review as opposed to the
7 people in the sample who passed the medical review? How did
8 you translate the results to the groups as a whole?

9 A We used the rates that you see there in parenthesis for
10 Method 1 and Method 2, and applied those to the full group.

11 Q So showing you 2328, does this now reflect the application
12 of those rates in order to calculate the numbers of people
13 within each group who qualified under both the medical and the
14 exposure criteria?

15 A That's correct. So, those are the rates multiplied by the
16 number of people in each of those groups.

17 Q And you'd use again both methods?

18 A We used both methods, correct.

19 Q Then what is the -- what is in the column that is
20 reflected as overall median, what are those numbers?

21 A That just provides the median value between the two
22 methods, between Method 1 and Method 2.

23 Q Does this now bring us in your analysis to the numbers of
24 claims, matched claims, pending as of the time that Grace filed
25 for Chapter 11 that meet both the exposure and the medical

Florence - Direct

99

1 criteria?

2 A It does, yes.

3 Q And turning now to 2301 --

4 MR. BERNICK: Ray, this is -- you like these moments.

5 Q Do we then have the information that appears as the
6 pending claims?

7 MR. BERNICK: We may have a mistake here That's both
8 criteria? Oh, yeah, well, that's right. But, I didn't show
9 that. I've got the one that's on the board -- 310 -- no,
10 that's right. 310, 367 for the lung cancers. No, that's not
11 right. Is that just exposure?

12 UNIDENTIFIED ATTORNEY: Yes, exposure.

13 MR. BERNICK: No, this is just exposure. Then this
14 one then has to be a mistake. I've got the board that's just
15 got the pendings. Give us a moment.

16 THE WITNESS: Would this be a good time to take a
17 break, Your Honor? I could use it.

18 THE COURT: Yes. All right. We'll take a ten minute
19 recess.

20 (Recess)

21 THE COURT: All right. Could you put that back up,
22 please? Mr. Bernick?

23 MR. BERNICK: Yes, thank you, Your Honor.

24 BY MR. BERNICK:

25 Q Dr. Florence, I want to take you back to an error that was

Florence - Direct

100

1 my own. We summarized 2328 and I was -- I misled myself by
2 looking at the 310 number for meso and described in my question
3 to you that this chart summarized the results of both criteria.
4 And I see now that it only describes the results of the
5 application of the exposure criteria, is that correct?

6 A That's correct.

7 Q Let's now get to the chart that I then skipped over in my
8 haste to reveal from the board. Let's go to 2329 and my
9 question to you is whether this now shows us the summary --
10 accurately summarizes the number of pending claims in each of
11 the disease categories meeting all of the criteria including a
12 reflection of the use of the Method 1 and Method 2?

13 A It does. It summarizes the results of applying those
14 rates to the group of individuals that filed proofs of claim.

15 Q Now if we take the two numbers for each of the disease
16 categories as reflected in 2329 and we calculate a median, does
17 that then get us to the column under pending claims for Exhibit
18 2301?

19 A It does. Yes.

20 Q Let's then take the next step and talk about the valuation
21 of these claims. When it comes to determining the valuation of
22 the claims that meet both criteria, where did you go in order
23 to obtain information relating to value?

24 A We went back to the closed claim data base and the sample
25 we selected from that data base.

Florence - Direct

101

1 Q Okay. Let's talk about -- well let me just ask you a
2 general question. When you went back to the closed claims data
3 base and you looked at the closed claims data base, what
4 comparison, if any, did you make with the claims in the closed
5 claim data base and the claims that had been sorted out through
6 the application of the criteria --

7 MR. INSELCBUCH: Objection Your Honor. This is where
8 we would enter our protective objection and ask for a continued
9 objection to anything that he has to say about this data base
10 and the settlements in that data base.

11 THE COURT: All right. The objection is noted and as
12 I indicated overruled so that we can get through this. But I
13 will make official rulings after I get to the end of all of the
14 evidence in the entire case.

15 MR. INSELCBUCH: Thank you, Your Honor.

16 MR. MULLADY: I want to join the objection.

17 THE COURT: All right. One second please. Okay, now
18 the objection is made, but I need the question restated. I
19 only got half of it.

20 MR. BERNICK: It wasn't a great question anyhow, but
21 we'll put it again.

22 Q You now want to get values, you said you go to closed
23 claims. Could you just go to any closed claims or was there
24 some other process that was involved in looking to particular
25 closed claims?

Florence - Direct

102

1 A We wanted to go to closed claims that met the criteria.
2 So those would be claims that had been previously settled or
3 closed by Grace that met the criteria we're looking at.

4 Q Showing you 2330, does this reflect the -- with respect to
5 the settled meso claims, the results of reviewing those meso
6 claims both for the exposure and the medical or diagnostic
7 criteria?

8 A It does.

9 Q So you say of this 285 settled meso claims, six met the
10 criteria, 21 did not meet and with respect to 258 there was
11 insufficient information?

12 A Yes. This is related to mesothelioma.

13 Q Right.

14 A And as you recall the only criteria dealing with
15 mesothelioma was whether the mesothelioma claimant met the
16 exposure criteria. So these claims, these settled claims were
17 reviewed by Exponent, as I understand, using the same
18 methodology to determine whether in fact they had sufficient
19 information to be judged to meet the exposure criteria on
20 whether they had insufficient information. And so, this
21 categorization is really the categorization by Exponent of
22 those closed claims.

23 Q Fine. Now, you have different averages for the six that
24 met 155,000, for the 21 that did not meet about 127,000 and for
25 the 92 or -- the 258 where the information was not sufficient,

Florence - Direct

103

1 \$92,649 average per claim, where did those numbers come from?

2 A That comes directly out of the claims data base provided
3 by Grace. These represents the -- represents the positive
4 amounts paid by Grace in those cases.

5 Q Okay. What observations, if any, did you have with regard
6 to these numbers; that is, the 92,000, the 127 and the 155?

7 A Well, yeah, this was a difficult analysis I think because
8 one dollar value that is not illustrated here is the average
9 for that entire group of settled claims which I think was about
10 \$96,000.

11 Q Okay.

12 A When we looked at this, the first thing we did was looking
13 at the six cases that met, there was a feeling that that was a
14 relatively small number of cases, but we wanted to see if in
15 fact that value was somehow statistically different from either
16 the overall average or these other averages. So that 155,000
17 we tested using statistical tests to determine whether
18 statistically it was different than the 127,000, the 92,000 and
19 the 96,000 that I mentioned.

20 Q And what did you determine?

21 A That it was not statistically different. So in other
22 words you would expect this kind of variation totally due to
23 sampling error, and the error in the process. So one of the
24 approaches we entertained was to value these cases at the
25 overall average, the \$96,000.

Florence - Direct

104

1 Q Okay. Why did you -- let me just before I -- I'm going to
2 ask you why you didn't, but let me just ask you another
3 question. Did you make any observations as to whether varying
4 evidence of exposure made a difference to claims value; that
5 is, better evidence of exposure, the higher values, lower or
6 poorer evidence of exposure to Grace product led to lower
7 values?

8 MR. FINCH: Objection, lack of foundation as to --
9 and to form as to better or less evidence of exposure.

10 MR. BERNICK: I'll rephrase it.

11 Q First of all, was there evidence regarding exposure that
12 was presented to you as a result of this process; that is, with
13 respect to these claims?

14 A Yes. We had the determination by Exponent of which of
15 these 285 claims met the exposure requirement and which didn't
16 and which had sufficient information to even judge the exposure
17 requirement.

18 Q What conclusion did you reach as to whether proof of
19 exposure to Grace product made a difference or did not make a
20 difference with respect to claim value for mesothelioma claims?

21 MR. FINCH: Objection as to form. By proof of
22 exposure to Grace product, is he talking about mixing,
23 installing, or any proof at all of exposure to Grace product?

24 MR. BERNICK: Your Honor, with all due respect I just
25 created a foundation. The foundation was the Exponent review.

Florence - Direct

105

1 The Exponent review has now been put into the record by two
2 different witnesses and it was on the basis of the Exponent
3 review that I asked him the question.

4 THE COURT: Well if we're basing it on Categories A
5 and C since that seemed to be what he testified about earlier,
6 is that the case?

7 MR. BERNICK: Yes, well that is what he testified.

8 THE COURT: Fine. Overruled.

9 A I'm sorry. Could I hear the question again?

10 Q Yes, the question is now -- we'll try it again. Could you
11 tell us what, if any, observations you have made as to the
12 impact of proof of exposure to Grace product as that proof was
13 presented to you through Exponent, what difference, if any, it
14 made to settlement value?

15 A Well this slide itself shows one conclusion which was that
16 where the information was unfortunately non-existent, the
17 claims average that was 258 claims they averaged \$92,000.
18 Where the claims information was available but did not meet the
19 AC criteria, the average was \$127,000. And in those six claims
20 where the information was available and they did meet the AC
21 criteria, the average was 155,000. So one conclusion was that
22 there was -- there did seem to be some trend, but when we
23 tested the statistical significance of that trend we basically
24 said -- we were able to determine that there really was no
25 statistically significant basis for distinguishing between

Florence - Direct

106

1 92,000 and 155,000.

2 Q Okay. I see from the slide that ultimately the 155 was
3 selected then for use?

4 A It was.

5 Q Okay. How then did you get to the valuations for the
6 other categories, the other disease categories as lung cancer,
7 other cancers, non-malignant disease?

8 A Well, we didn't have the same type of data on lung
9 cancers, other cancers and non-malignant disease on the closed
10 population as we did on the meso group. So we had to derive
11 some additional method of trying to value that group of claims.

12 Q And what was that method?

13 A What we did was we looked at the TDPs, trust distribution
14 procedures, that have been promulgated in bankruptcies over the
15 last, I guess it was probably two years and we looked at the
16 relationship of those values to mesothelioma value. For
17 example, if looking across all these TDPs there is a pattern
18 that would indicate lung cancers tend to be valued at a lesser
19 percentage than mesos and that percentage tends to be -- I
20 don't remember the exact number, but let's say 62 percent. And
21 other cancers in those TDPs tend to be valued at some
22 percentage of meso and let's say that number tends to be 32
23 percent.

24 So we use that pattern that existed in the trust
25 distribution procedures of other bankrupts to set the values

Florence - Direct

107

1 for the claims other than mesothelioma. So using the 155,000
2 as the average for mesothelioma we said the other values would
3 follow this pattern, the pattern that we saw in the other TDPs.

4 Q Is what you've just said now accurately summarized in
5 Exhibit 2331?

6 A It is.

7 Q Okay. If we then want to take that out to the ultimate
8 valuation of all of the pending claims, I'm assuming that
9 that's a question of multiplication?

10 A It's purely arithmetic at that point, yes.

11 Q Okay. Showing you the other -- the last -- the next two
12 columns on 2301; that is, claim value, are the numbers that
13 appear here the same values per claim that you've just
14 described in Exhibit 2331?

15 A They are. The non-malignant claims are in a little
16 different order, but the same value, same numbers.

17 Q Okay. And if we then express the pending claims times
18 claim value, do we get then the total pending claim values for
19 meso, lung cancer, other cancers and non-malignant that are
20 reflected in the total pending values expressed in millions, so
21 the total would be 81 million for total pending?

22 A That's correct. With remembering that that pending claim
23 column is the median value between Method 1 and Method 2.

24 Q Okay. Now peeling one more thing off the top, are we now
25 going to want to go talk about future claims, is that the next

Florence - Direct

108

1 step in the process?

2 A It is.

3 Q Okay. Was the first step of being able to project future
4 claims against Grace -- what was the first step involved in
5 that process?

6 A It was to characterize the historical population of claims
7 against Grace whether they be pending or resolved as claims
8 that would or would not meet these criteria.

9 Q Okay. So let's begin with mesos. What population of
10 mesos did you work with in creating your baseline for the
11 future projection, showing you 2333?

12 A Well, we started with the pending cases which we've
13 already talked about.

14 Q That's the 310?

15 A That's the 310, correct.

16 Q We see that right on the board there?

17 A Right.

18 Q Okay. Then what was the next component?

19 A We went back to the resolved claims and said if those
20 claims had met the criteria at the same rate that the claims
21 that were pending met the criteria, then there would be 688
22 resolved claims that would meet the criteria.

23 Q Now, you have 998 total meet criteria from 1980 to 2000,
24 what does that represent?

25 A That's just the sum of the pending claims and the resolved

Florence - Direct

109

1 claims. So, it gives you the full historical data base in
2 terms of mesos that would meet the criteria.

3 Q Now earlier in the day you talked about the necessity of
4 creating an input to your futures model. How -- can you tell
5 us how it is that on the basis of defining this population of
6 meso claimants you were able to create an input to the model?

7 A Well, that tells us for historical claims and for year
8 periods within that historical period for each year how many
9 claims were filed in that year that would have met the criteria
10 that were specified to us.

11 Q So what then is the -- now knowing the total number of
12 claims by year that met the criteria, what's the next step in
13 creating your calculation of futures?

14 A We look back to -- first we go to the most recent history
15 under the belief, and I think the belief that is shared by most
16 forecasters, that most recent history is probably the best
17 indicant of what is going to happen in the future. We go to
18 that most recent historical period and we look at how many
19 claims were filed there that met that criteria. And in that
20 period we look at we normally call a calibration period, that's
21 the period of interest to us.

22 Q Showing you 2334, does this illustrate the calibration
23 period that you use which is 1996 to 2000?

24 A Right. We actually used a number of calibration periods
25 that ranged from '96 to 2000. So we actually used a five-year

Florence - Direct

110

1 calibration period. One was a five-year calibration period
2 that ranged from '96 to 2000; '96, '97, '98 '99, 2000 all the
3 way down to 1999 and 2000. So there's groups of years that
4 we're looking at. And the idea here is you don't -- it's
5 possible in doing an analysis like this, that one year or
6 another year might be anomalous in some way. So by combining
7 years you hope to minimize the effect of any anomaly.

8 Q Showing you 2235, does this reflect the varying
9 calibrations that you did and the varying calibration periods
10 that you used in connection with the process of building your
11 model for future meso claims?

12 A Right. And when I say building my model we actually are
13 building multiple models here. We're building a model for each
14 calibration period. So we're saying what if the future looked
15 like the period '96 through 2000? What if the future looked
16 like the period '97 to 2000, '98 to 2000, '99 to 2000?

17 Q Okay. In order to go forward from these calibrations to
18 the future, how do you fill in the mesothelioma trend based
19 upon these varying calibrations?

20 A Well, the trend is reasonably captured in the calibration
21 periods. So, in other words, by picking alternative
22 calibration periods if there is a trend it will be captured.

23 Q My mistake. How do you extend that trend out into the
24 future in years beyond 2000 using your model?

25 A I think that's when we really look to the epidemiological

Florence - Direct

111

1 models that I think were referred to earlier, and those are
2 generally models by either -- that were either developed by
3 Nicholson or a model developed by Peto. So we really look at
4 two different models.

5 Q Okay. I'm showing you 2337, does this describe in just
6 general terms the two different models?

7 A Yes, it describes the -- it certainly describes the
8 Nicholson KP&G model. I'm sorry. I'm on the wrong slide.

9 Q I switched them on you.

10 A Yes, it talks about -- there's really two models;
11 Nicholson and Peto.

12 Q Okay. Now, if we go back to the calibration periods I
13 think that you've said that you run more than one model and
14 more than one calibration period.

15 A We do.

16 Q Showing you 2336, does this illustrate just what we talked
17 about; that is using different calibration periods and then
18 running different models for each of the calibration periods in
19 order to project out the Grace specific mesothelioma future
20 trend?

21 A That's correct. What you are really looking at, and this
22 is -- this curve at the top is the, what we call the Nicholson
23 KP&G curve, it's the curve that was originally developed by Dr.
24 Nicholson as enhanced by work from KP&G. For a given
25 calibration period, you are looking at what's the ratio of

Florence - Direct

112

1 qualified claims in that calibration period to the number of
2 claims that Dr. Nicholson and KP&G estimated would be filed
3 during that period due to occupational exposure to any
4 asbestos.

5 Q Okay. And so now what are you doing with respect to
6 Grace?

7 A I'm sorry?

8 Q You said that that is occupational exposure as a whole,
9 what are we doing with respect to the Grace projections?

10 A Well, for each calibration period we're looking at what
11 proportion of the total forecasted occupational exposures were
12 exposures that resulted from claims filed against Grace that
13 met these criteria. And so that ratio then uses the curve as
14 you see it going past 2000 and it assumes that same ratio going
15 forward. So, it provides us with an estimate of if these
16 claims track this epidemiological curve and there were the same
17 proportions we've historically determined in the calibration
18 period met the criteria, this is what the forecast would look
19 like.

20 Q Now, you said you assumed that ratio remains constant. Is
21 that an assumption or is that something that you verified that
22 is for the next 30 or 40 years is going to remain the same?

23 A That's really an assumption.

24 Q Okay. Based upon those analyses, does 2338 list the
25 different calibration periods, the different estimation methods

Florence - Direct

113

1 and the different net present values for future mesothelioma
2 claims for Grace?

3 A It does. So if you look down the left-hand column you see
4 the forecasting method is either Nicholson or Peto. The
5 calibration period you notice the differences there from '96 to
6 2000, '97 to 2000. And then for each of these -- so we have a
7 different forecast for each calibration period and each method
8 and that provides us, for mesothelioma, with eight forecasts.

9 Right?

10 Q Okay.

11 A Then you'll notice that that forecast is done on the
12 Method 1 data. So in other words assuming that the people that
13 responded to the information and qualified are the only people
14 that would qualify and then using Method 2 data, it's under the
15 assumption that people that didn't respond and didn't provide
16 sufficient data would qualify at the same rate as the people
17 that responded and had sufficient information. So this shows
18 you the variation, at least for mesothelioma, of all of those
19 forecasts.

20 Q Okay. If we then want to sum up; that is, both pendings
21 and futures on an NPV basis, I want to show you 2340 and ask
22 you whether this is an accurate summary of the NPV values for
23 pendings, futures and then pendings and futures for each of the
24 different categories using each of the Method 1, Method 2 and
25 then stated as median values and millions of dollars.

Florence - Direct

114

1 A This is really a table of the kind of medians of medians.
2 That line there on Method 1, just to make it clear, we're
3 pricing the present and future claims as if they were qualified
4 under the assumptions of Method 1. The pending claims are
5 worth, I think we valued earlier the present value at \$24
6 million.

7 The futures is actually multiple forecasts because we
8 were looking at Method 1 using these alternative methods,
9 right, and alternative calibration periods. So that 128 is
10 really a median of multiple forecasts. So when you add those
11 together it gives you 152 million, and then the bottom line
12 there is a median of medians. It's just a midpoint of all
13 those midpoints.

14 Q Does this now give us the last two columns of 2301 which
15 are the valuations for futures on a median basis and then the
16 valuations for pendings and futures NPV on a median basis
17 resulting in a total of \$468 million NPV?

18 A NPV on a median basis, correct.

19 Q Okay. Dr. Florence, after -- I take it that a tremendous
20 amount of work has gone into this process and we've seen that,
21 I mean, is that true?

22 A Yes, I would agree with that.

23 Q Okay. And we see that different techniques have been used
24 depending upon the availability of the data?

25 A Yes.

1 Q Based upon the assumptions that you've made in this
2 process and based upon the methods that you have deployed, are
3 you aware of any other more reliable way to estimate Grace's
4 current and future asbestos liability than the one that you
5 have chosen to present here?

6 A Assuming that liability is based on these criteria.

7 Q Yes.

8 A I have no better -- this is the best way I could come up
9 with, yes. I know of no better way.

10 MR. BERNICK: Your Honor, we will offer in certain of
11 the demonstratives as summaries. I will provide a list of
12 those to counsel before the lunch break. I am assuming that we
13 will probably take a lunch break now, is that appropriate?

14 THE COURT: Yes, that's fine.

15 MR. BERNICK: And then we'll make the formal proffer
16 after we come back from lunch and then I'll pass the witness to
17 opposing counsel.

18 THE COURT: All right. We'll be in recess until
19 1:05.

20 MR. BERNICK: Thank you.

21 (Lunch recess)

22 THE COURT: Please be seated. Dr. Florence, just a
23 reminder that you are still under oath. And, Mr. Bernick, you
24 were going to offer some exhibits.

25 MR. BERNICK: Thank you, your Honor. TJ, if you

1 could show 233. We're offering in as summaries the following.
2 This list has been provided to counsel for the ACC and the FCR
3 2316 through 18, 2321, 22, 24, 25, 27 through 29, 31, 36, 38
4 and 40, along with 2301. If Your Honor would like me to go
5 back over those, I can.

6 THE COURT: I have them.

7 MR. BERNICK: Okay. I understand from Mr. Finch that
8 he has a concern with the slope of 2336, that is the Nicholson
9 KPMG curve. It appears to come down rather precipitously. And
10 I am told, and will represent to the Court, that that is an
11 accurate slope given the scale from 2000 going forward. It's
12 all very compressed but it is different, the scale is different
13 than before 2000. There was more space before 2000. So when
14 you see it kind of going over the edge like a roller coaster,
15 that is simply a function of the different scale on the
16 horizontal access before and after 2000, but it is otherwise
17 accurate after 2000.

18 MR. FINCH: My objection, Your Honor, is that as
19 depicted one would draw the conclusion that the scale to the
20 right of the year 2000 is the same as the scale to the left of
21 the year 2000 in terms of years and that is absolutely not the
22 case, which leads to a projection of the Nicholson incidents
23 curve that appears to drop off rapidly after the year 2000 when
24 in fact it is a very, very gradual decline.

25 THE COURT: Well isn't that curve in several of his

1 reports that are in exhibits both in the debtor's and the ACC's
2 and the FCR's exhibits?

3 MR. FINCH: Not in Dr. Florence's -- that curve
4 doesn't appear in any of Dr. Florence's reports, Your Honor.
5 It occurs in Dr. Nicholson's -- excuse me, in Dr. Peterson's
6 report. My objection is just solely to the scale on the right
7 side of the line. If it's clear from the record that the scale
8 on the right side of the line is much more compressed than the
9 scale of years on the left side of the line, then I don't have
10 an objection to the exhibit.

11 THE COURT: Okay. All I want to make sure, I thought
12 that in Dr. Nicholson's reports themselves that his own curves
13 were reported and that his reports are in evidence before me
14 somewhere. I thought his 1982, '86 reports were --

15 MR. BERNICK: In fairness to Mr. Finch, the Nicholson
16 KPMG curve is an adjustment or a modification of the Nicholson
17 curve, so that is Nicholson KPMG.

18 THE COURT: I see, okay.

19 MR. BERNICK: So we would be happy if Mr. Finch wants
20 to provide for the Court in evidence the KPMG curve itself, you
21 know, on a broader scale, but --

22 MR. FINCH: We will put that into evidence with Dr.
23 Peterson's testimony, Your Honor.

24 THE COURT: All right. I will -- I understand that
25 the scale to the right of the 2000 year axis is not the same

1 scale as to the left of that axis. I've made a note and that
2 this -- that the curve is in that sense a steeper curve than
3 would otherwise be the situation and that you will put a
4 representation of the curve itself as another exhibit. Let me
5 just make a note.

6 MR. BERNICK: Okay. And I believe that that then
7 takes care of the sole objection to the exhibits, the summaries
8 that I've listed, and we would offer those into evidence as
9 summaries.

10 MR. FINCH: No objection to the rest of them, Your
11 Honor.

12 THE COURT: All right, so Exhibit -- so I'm admitting
13 Exhibit 2336 with that explanation and --

14 MR. MULLADY: For the record, Your Honor, no
15 objection by the FCR joining the comments of the ACC's counsel
16 with respect to 2236.

17 THE COURT: 2336.

18 MR. MULLADY: 2336, excuse me.

19 THE COURT: Okay, thank you, same ruling. All right
20 and exhibits 2316, 17, 18, 21 and 22, 24, 25, 27, 28, 29, 31,
21 36, 38, 40 and 2301 are all admitted.

22 MR. BERNICK: Thank you, Your Honor. And with that,
23 we would pass the witness.

24 THE COURT: All right. Give me one second, Mr.
25 Finch.

Florence - Cross/Finch

119

1 (Pause)

2 THE COURT: Okay, thank you.

3 MR. FINCH: Ready to proceed. Nathan Finch for the
4 Asbestos Claimants Committee.

5 CROSS EXAMINATION

6 BY MR. FINCH:

7 Q Good afternoon, Dr. Florence.

8 A Good afternoon.

9 Q Dr. Florence, just --

10 MR. FINCH: Could you put the ELMO back on please? Q
11 Since what lawyers say is not evidence, you would agree
12 with me, would you not, sir, that the timescale to the right of
13 the year 2000 is much more compressed than the timescale to the
14 left of the year 2000?

15 A I would agree, yes.

16 THE COURT: Just for the record, you are talking
17 about Exhibit GG-2336.

18 MR. FINCH: Yes, GG-2236 -- 2336.

19 Q Correct?

20 A I would agree, yes.

21 Q Do you still have your notebook of the two reports that I
22 handed to you when I was voir diring you?

23 A I do.

24 Q Could you open that notebook to your second report?

25 MR. FINCH: What's the ACC exhibit number?

Florence - Cross/Finch

120

1 THE COURT: 462.

2 Q 462. 462, Page 2, do you have those?

3 A I do.

4 MR. FINCH: Can we switch? Excuse me, could we
5 switch off the ELMO to the -- John?

6 Q Okay. You were asked to assume that the only claimants
7 whose claim -- the only claimants whose claims met the
8 following criteria would be able to sustain their burden of
9 proof that their claims against Grace are valid and therefore
10 that their claims should be valued as a part of the estimation
11 process, is that correct?

12 A That's correct.

13 Q And focusing on the nature of the minimum exposure
14 criteria and focusing on mesothelioma claims, you assumed that
15 the only valid mesothelioma claims that you gave value to were
16 from workers who personally mixed Grace asbestos containing
17 products and workers who personally installed Grace asbestos
18 containing products, correct?

19 A That's correct.

20 Q And on the questionnaires the mixer is Category A and the
21 installer is Category C?

22 A I believe that is correct, yes.

23 Q You didn't make any assessment of the validity of that
24 assumption, did you sir?

25 A I did not, no.

Florence - Cross/Finch

121

1 Q You made no independent judgment as to whether any of
2 these assumptions as to what claims would be compensable or
3 valid assumptions or invalid assumptions, correct?

4 A Correct. The assumptions were provided to me.

5 Q You didn't have any input to them?

6 A Correct.

7 Q You weren't consulted about them?

8 A Correct.

9 Q You don't have any opinion one way or the other as to
10 whether these criteria are valid assumptions for a Court to
11 adopt in estimating Grace's asbestos liability?

12 A Correct.

13 Q You don't have any opinion as to whether these criteria
14 could successfully have been applied by Grace if it had not
15 gone into bankruptcy?

16 A I have no opinion.

17 Q And you don't have any opinion about whether people who do
18 not meet these criteria could successfully prosecute a claim to
19 judgment in the tort system, do you?

20 THE COURT: I'm sorry, Mr. Finch, would you repeat
21 that please?

22 Q Yes. You don't have any opinion about whether people who
23 do not meet the criteria you were asked to assume could
24 successfully prosecute a claim to judgment in their favor
25 against Grace in the tort system?

Florence - Cross/Finch

122

1 A I have no opinion, correct.

2 Q Okay. With respect to the mesothelioma criteria of
3 personally mixed and personally installed, that was one of the
4 criteria you were asked to assume, correct?

5 A It was, yes.

6 Q As part of your work in this case you reviewed some
7 deposition transcripts of Grace's in-house lawyers, correct?

8 A I read them some time ago, quite long ago.

9 Q Okay. You would agree with me that historically Grace
10 paid mesothelioma claims that did not meet the mix or install
11 criteria?

12 MR. BERNICK: Objection to -- objection to the
13 question on grounds of lack of foundation, number one, and to
14 the extent that this is based upon the testimony of Grace
15 employees. I further object that it violates the stipulation.
16 They are not reliance materials and he's offered no opinion.

17 THE COURT: I can't hear you, Mr. Bernick. I'm
18 sorry.

19 MR. BERNICK: I object on grounds of lack of
20 foundation, and further object to the extent that he is being
21 asked about the deposition testimony of Grace employees that
22 goes beyond the scope of his direct examination. He's offered
23 no opinion regarding that. And it also violates the terms of
24 the stipulation which say that unless something is actually
25 relied upon in connection with the opinion that's offered it's

Florence - Cross/Finch

123

1 not subject to discovery merely because it was reviewed.

2 Q Dr. Florence, can you turn to your second report, Pages
3 1-1 and 1-2 at the very back?

4 A I-1?

5 MR. BERNICK: I-1?

6 Q I-1. It's about the fourth page from the end of the
7 document.

8 A Yes.

9 Q This says --

10 MR. FINCH: Keep going, John. It's Exhibit 1.

11 THE COURT: Appendix 1?

12 MR. FINCH: It's Exhibit 1. It's after Appendix J,
13 Appendix K, Appendix L and then it becomes -- there's an
14 Exhibit 1 and there's an Exhibit 2.

15 THE COURT: You are talking Page 2-1 not I-1?

16 MR. FINCH: I'm talking Page 1-1, Exhibit 1-1.

17 A It's an exhibit, not an appendix.

18 Q It's an exhibit. Do you have the exhibit in front of you,
19 Dr. Florence?

20 A I do.

21 Q And at the top it says Exhibit 1, Documents Relied Upon?

22 A Yes.

23 Q And listed in the documents relied upon, Number 10 is the
24 testimony of Robert Beber taken February 21, 2007. Number 11
25 is the testimony of Jay Hughes taken February 22, 2007. Number

Florence - Cross/Finch

124

1 20 is the testimony of Robert Beber taken July 30th, 2002.
2 Number 21 is the testimony of David Siegel taken September 19,
3 2002?

4 A Yes.

5 Q And Number 18 is the testimony of Jay Hughes taken July
6 19th, 2002?

7 A Yes.

8 Q And you have done work in estimating asbestos claims and
9 the costs of those claims for the W.R. Grace company for more
10 than ten years, correct?

11 MR. BERNICK: At this point, Your Honor, first of all
12 the work that he did for Grace in connection with their reserve
13 estimate has not been before the Court in connection with this
14 witness' testimony. Secondly, while it is true that these
15 documents were listed as reliance materials he was specifically
16 asked about this in his deposition and clarified that he simply
17 was asked to read them and doesn't really know why and that
18 they were not used. So, they are not reliance materials.

19 MR. FINCH: Your Honor, Dr. Florence testified that
20 he -- on my voir dire that he was relying on all of his past
21 experience in estimating asbestos liabilities for here. Mr.
22 Bernick asked him specifically about estimates for defendants
23 done in the tort system and included on that list is W.R.
24 Grace.

25 I would submit to you that the reliability of an

1 expert's work and the credibility of an expert's work is always
2 within the scope of direct examination. Mr. Bernick asked him
3 about the work he did for Grace on direct exam and I think I am
4 perfectly entitled to cross examine Dr. Florence about his
5 prior work in the Grace case and in other cases.

6 The expert stipulation doesn't bar this. The
7 stipulation Mr. Bernick has referred to has nothing to do with
8 this. And, in fact, during a hearing on May 2nd, 2007 I
9 specifically raised this issue with the Court. I made very
10 clear that I never agreed that I couldn't use Grace's past work
11 that Florence did to impeach him or to impeach the company.
12 That is critical to the ACC's ability to impeach him at trial.
13 I never agreed to that and later in the transcript Mr. Bernick
14 says, "We're not taking the position you can't impeach Dr.
15 Florence with prior testimony, prior contrary testimony as Dr.
16 Peterson was impeached in the Babcock & Wilcox case based upon
17 his prior sworn testimony in that case."

18 And later on in the same transcript I say, "I can
19 impeach the company. The company is the one who is presenting
20 an estimate of liability. I am certainly entitled to show how
21 they did it in the past." And the Court responded, "Sure, you
22 can show how they did it in the past, but that is, as I
23 understand it, was the scope of the depositions in the past."

24 So I think his methodology that he used in the past
25 for Grace is certainly relevant to the estimate that you are

Florence - Cross/Finch

126

1 being asked to accept here. It's no different than in a real
2 estate valuation case. If a real estate expert, an appraiser,
3 had a long history of valuing Black Acre by comparables in the
4 same neighborhood and then he comes into Court and says this
5 time I'm basing the value of Black Acre on astrology. You
6 could certainly go back and impeach him with his prior work.
7 And it's not covered by the expert stipulation.

8 MR. BERNICK: Your Honor, (a) there is no impeachment
9 at least as of this point in time, there is no impeachment
10 whatsoever, (b) it is -- we had a stipulation, the stipulation
11 governed this particular situation. There are all kinds of
12 materials I could have used to impeach Dr. Peterson and their
13 other experts, but because they didn't rely upon them, I'm not
14 permitted to do that.

15 What they want, they want to establish that the
16 company has taken an inconsistent position. They can certainly
17 seek to establish that through their own witnesses and witness
18 for the company if the company appears here. But, the whole
19 purpose of the stipulation was to control the cross examination
20 and the discovery to those matters that the expert actually
21 chose to rely upon. This expert has specifically disclaimed in
22 his deposition using the prior testimony for purposes of his
23 work in this case. The only testimony that he's now offered is
24 that his experience is that they want the basis for his work.
25 Well, of course that is always true.

Florence - Cross/Finch

127

1 The purpose of the stipulation was to limit the scope
2 of discovery in cross examination. We have abided by it. They
3 should abide by it. And if they want to make their own record
4 about their views of our approach, they can do so through their
5 own witness. But, you can't take a witness that I've put on
6 the stand who has talked about a specific opinion based upon
7 specific work. And I'll say for all purposes this witness is
8 going to be open to "cross examination" that's all designed to
9 explore their model. The model -- their model, is not before
10 the Court. His model is.

11 MR. FINCH: Your Honor, the stipulation says that
12 simultaneous with the service of the expert reports, the
13 experts produce their reliance material. The only things that
14 are outside of the scope of permissible discovery are any notes
15 or other writings taken or prepared by or for an expert witness
16 in connection with this matter, including correspondence or
17 memos to and from, the notes of correspondence with the
18 expert's assistants and/or clerical support path, one or more
19 other expert witnesses or non-testifying expert, consultants,
20 or one or more attorneys for the party offering the testimony
21 of such expert witness, unless the expert witness is relying
22 upon those notes or other writings in connection with the
23 expert's witnesses opinions, draft reports, any/all
24 communications between the expert and the expert's staff,
25 unless the expert is relying upon those communications, the

Florence - Cross/Finch

128

1 software constituting or underlying any computer model, and any
2 confidential information disclosed to the expert in a prior
3 engagement by another client or entity.

4 This -- his prior work, both for Grace and others,
5 don't fall into any of those categories. And to the extent
6 they -- they just don't. And these questions were put to Dr.
7 Florence at his deposition about his prior work for Grace and
8 his prior work in other cases and I submit to you it's highly
9 relevant and highly informative to the Court, and not within
10 the purview of the expert stipulation, his prior work.

11 THE COURT: It seems to me that the particular
12 question that -- we've gotten so far afield of what the
13 particular question was at this point. The question was that
14 he had estimated claims and costs of those claims for the
15 debtor for more than ten years. And then there was an
16 objection. I mean, to the extent that the objection is, you
17 know, whether he has estimated claims for the debtor for more
18 than ten years, I don't see that that's an objectionable
19 question. To the extent that after that we're going to get
20 into work that -- and what it is that he has done for the
21 debtor, to the extent that you're going to ask him questions
22 about the reserve work and what that has -- what relevance that
23 may have to do with the debtor, I don't know if what happened
24 ten years ago and what's reserved for financial statements is
25 at issue.

1 This is not a fraudulent conveyance trial. This is
2 an estimation trial for what the debtor has to put into this
3 trust to get through this particular -- or some other entity if
4 the debtor is not the successful plan proponent -- has to get
5 into this trust in order to get this case through confirmation.
6 So what may have been relevant in an estimation trial on
7 fraudulent conveyance issues and estimations for liability
8 depending on what the debtor did with particular financial data
9 and that type of a trial may not be relevant here at all.
10 Nonetheless, this witness can surely answer whether he has
11 worked for Grace estimating tort claims for the last ten years.
12 That objection is overruled. Dr. Florence, you may answer that
13 question.

14 BY MR. FINCH:

15 A Yeah. We've done work for Grace -- I say we -- the firm
16 has done for Grace since about 1995.

17 Q And the work you have done for Grace was to estimate the
18 cost that Grace would bear -- prior to the time that Grace went
19 into bankruptcy, each of the times you've worked for Grace, you
20 were estimating the cost that Grace would bear to resolve
21 asbestos personal injury claims while it continued in the tort
22 system, correct?

23 A I believe so. We were asked on most of those occasions,
24 except for, I think, the last engagement in 2000, to estimate
25 the volume and the timing and the value of claims, both pending

Florence - Cross/Finch

130

1 and future, that would be filed against Grace, assuming they
2 stayed in the tort system.

3 Q And in the 2000 engagement, you estimated the number of
4 claims but not the value, correct?

5 A That's my recollection. Yes.

6 Q Okay. And the work you did for Grace in 1997, do you know
7 what purpose they used that work for?

8 A I don't.

9 Q Do you know that they used your estimates -- do you know,
10 one way the other, whether they used your estimates to evaluate
11 their solvency for purposes of spinning off the Sealed Air
12 packaging business?

13 A I don't know precisely how they used my work.

14 Q In all the times you did work for Grace in the past, was
15 -- strike that. I'll do it in a more specific basis. In fact,
16 would you agree that there is no TDP that you're aware of that,
17 for the mesothelioma criteria, restricts payment only to people
18 who personally mix or personally install asbestos containing
19 products?

20 A That is --

21 MR. BERNICK: A TDP in existence in connection with
22 the trust?

23 MR. FINCH: Yes.

24 A I think I answered that earlier, about -- I think it is
25 non-explicitly, only as a subset of some other criteria. At

Florence - Cross/Finch

131

1 least my recollection is of the TDP's I've worked with.

2 Q Isn't it true that there is -- is there any TDP that you
3 are aware of that has, for the mesothelioma criteria, that
4 restricts payment only to the people who personally mix or
5 personally install asbestos containing products?

6 A I think I said no. I mean, is that explicit, only those
7 two? No.

8 Q So -- okay. So the TDP's for mesothelioma allow valid
9 claims from people even though they don't personally mix or
10 personally install asbestos containing products?

11 MR. BERNICK: Objection to the form of the question.
12 Invalid.

13 THE COURT: Sustained.

14 BY MR. FINCH:

15 Q And isn't it correct that you're not aware of any solvent
16 defendant in the tort system that restricts payments in
17 mesothelioma cases solely to people who can demonstrate that
18 they've personally mixed or personally installed an asbestos
19 containing product?

20 MR. BERNICK: Objection. A) lack of foundation. B)
21 that most certainly violates the terms of the stipulation and,
22 not only that, but implicates potentially confidential
23 information that this witness may have because he does
24 consulting for those other clients.

25 MR. FINCH: Your Honor, I asked him exactly that

Florence - Cross/Finch

132

1 question in his deposition so, to the extent -- I wasn't asking
2 about confidential information. The question is, does he know
3 one way or the other, not what the criteria are, but does he
4 know of any solvent defendant that restricts payment in
5 mesothelioma cases solely to people who can demonstrate that
6 they personally mixed or personally installed an asbestos
7 containing product.

8 MR. BERNICK: And the answer to that question is it's
9 plainly barred by the stipulation because to explain or deal
10 with his answer, we would then have to go into materials that
11 he has not relied upon in order to demonstrate what it was that
12 he was talking about, and that was the whole purpose of the
13 stipulation, is to avoid that inquiry.

14 MR. FINCH: Your Honor, in the deposition, he
15 answered that he knows of none.

16 MR. BERNICK: It makes no difference what it is in
17 his deposition. It's not -- we should not be opening the door
18 to an improper line of inquiry at this trial.

19 THE COURT: The deposition testimony, I think, at
20 this point, is not necessarily the question. You know, if you
21 wish to try to introduce his deposition testimony, that's a
22 different line of inquiry that you may have the opportunity to
23 do. But while he's here, I think the issue is whether or not,
24 at this point, there is some privilege. I don't see that there
25 is a privilege that's been asserted. I'm not aware of whether

Florence - Cross/Finch

133

1 that's going to violate the confidential sources. At the
2 moment, it's a yes or no answer. I don't see how that's going
3 to violate confidential information.

4 MR. BERNICK: Because, Your Honor, in order for us to
5 deal with that testimony that he's now said no, we would then
6 have to unpack what kind of clients it is that he has and what
7 the basis for his knowledge is in order to explore how broad or
8 how limited it might be because they will take -- they could
9 argue on the basis of this answer that, gee, it's not there,
10 there's no evidence of it, whereas, in fact, the basis for his
11 testimony is much more limited. I can't go down that road
12 because I can't ask him to breach his confidences and I don't
13 have -- shouldn't have to deal with that inference because the
14 question itself is improper under the stipulation. Dr.
15 Peterson has all kinds of information that we've not been able
16 to get into because it's covered by this stipulation. Ms.
17 Biggs has got all kinds of information that we can't get into
18 because it's covered by the stipulation. We should not have to
19 deal with this line of examination. Mr. Finch can't sit there
20 and pick where he wants to stand by the stipulation and where
21 he doesn't want to.

22 THE COURT: All right. How is this covered by the
23 stipulation?

24 MR. BERNICK: Because it's an inquiry into matters
25 that are part of his experience that he is not relying upon for

Florence - Cross/Finch

134

1 purposes of his testimony.

2 THE COURT: Of making his estimate with respect to --

3 MR. BERNICK: That's correct.

4 THE COURT: -- Grace's part?

5 MR. FINCH: Your Honor, I -- the stipulation does not
6 preclude you from cross examining an expert about stuff he
7 didn't rely upon. All it says is you can't discover five
8 limited categories of things. And the five limited categories
9 of things are what I read to Your Honor earlier. It does not
10 -- it is not -- it does not preclude me from cross examining
11 him about stuff he's relied upon in other places and he's not
12 relying upon here. I mean, that's what you do with an expert;
13 you cross examine him about the stuff you think he should have
14 relied upon but didn't.

15 MR. BERNICK: That's correct. And ordinarily the
16 rules provide for broad cross examination of reliance materials
17 as well as things that have been reviewed but not relied upon.
18 That is not the rule that we've adopted in this case.

19 MR. FINCH: It is.

20 THE COURT: Somebody is going to have to show me the
21 stipulation. I'm sorry.

22 MR. FINCH: Your Honor, I'll move on and I'll pack it
23 up in a few minutes.

24 THE WITNESS: Can I have water, please?

25 MR. FINCH: It's right here.

Florence - Cross/Finch

135

1 THE WITNESS: Thank you.

2 THE COURT: Let me read it, please.

3 MR. FINCH: Sure.

4 (Pause)

5 THE COURT: All right. Well, the only part of this
6 stipulation that I can see that would apply is 5, "Any
7 confidential information disclosed to the expert in a prior
8 engagement by another client or entity if, in fact, this would
9 be information that was disclosed by another client or entity."
10 So -- and I can't tell that from the question specifically. So
11 I guess, Mr. Finch, first of all, what we're going to have to
12 establish is whether or not he -- I suppose we can get as far
13 as saying whether he is or is not aware of any solvent
14 defendant who makes this restriction. But then the next
15 question is going to have to be, as a follow-up, you know,
16 whether the basis for that information is confidential
17 information. And if it is, that's going to end this inquiry.

18 MR. BERNICK: Right.

19 MR. FINCH: That's fine. My question, as posed, is
20 is he or is he not aware of any solvent defendant that
21 restricts payment in mesothelioma cases to people -- to only
22 those people who personally mix or personally install asbestos
23 containing product.

24 THE COURT: And regardless of the outcome, the next
25 question is whether the basis for his information is based on

Florence - Cross/Finch

136

1 confidential information and whether he is or is not so aware.
2 If it's based on information that is confidential, that ends
3 the inquiry.

4 MR. FINCH: I understand, Your Honor.

5 THE COURT: So at that point in time, if it's based
6 on confidential information, I will be striking the testimony.

7 MR. BERNICK: Yeah. Well, the other -- I'm sorry,
8 Your Honor. I think that the other way of doing it is simply
9 ask whether the question potentially implicates confidential
10 information.

11 THE COURT: That's --

12 MR. BERNICK: If it does, that's the end of it.

13 THE COURT: That's true too.

14 MR. BERNICK: But the other thing is that I would
15 hasten to point out to the Court, the little three, or whatever
16 it is, Romanette iii, picks up any materials that have been
17 furnished, any oral or written communication between an expert
18 witness and dah, dah, dah, dah, one or more attorneys for the
19 party offering the testimony of such witnesses. So any
20 materials, be they oral or written, that have come from Grace's
21 counsel -- I would imagine that includes all of this testimony
22 -- that also is picked up by Romanette iii, unless the expert
23 witness is relying upon it.

24 THE COURT: All right. So I think if you
25 substantiate the basis first for where information is coming

Florence - Cross/Finch

137

1 from, Mr. Finch, we would probably be in safer grounds.

2 BY MR. FINCH:

3 Q Dr. Florence, your reliance materials that you produced in
4 this case, would you agree me that experts' work needs to be --
5 in order to be reliable, it needs to be replicable?

6 A I would think so. Sure.

7 Q And so in order for the ACC and FCR experts to replicate
8 your work, you produced a lot of back-up materials, correct?

9 A I did. Yes.

10 Q And you included within the back-up materials the stuff
11 you relied on, were the deposition transcripts that I showed
12 you in Exhibit 1, correct?

13 MR. BERNICK: I object to the -- that's a compound
14 and misleading question. He produced the reliance materials
15 presuming that, because it was produced as reliance materials,
16 it then is responsive or is linked to the prior question which
17 asks about reproducibility. This is just -- Your Honor, this
18 is playing around. We ought to just get to the core of the
19 issue and have him find out, you know, how he got these
20 deposition transcripts.

21 MR. FINCH: Your Honor, I'll move on. The deposition
22 transcripts were relied upon by Dr. Florence. They said -- he
23 wouldn't have had to produce them if he wasn't relying on them.

24 BY MR. FINCH:

25 Q Dr. Florence, sticking with your first report --

Florence - Cross/Finch

138

1 (Pause)

2 Q All right. Dr. Florence, without relying on any
3 confidential material from any source whatsoever, are you aware
4 of a single defendant in the tort system that restricts payment
5 in mesothelioma cases solely to people who can demonstrate that
6 they personally mixed or personally installed an asbestos
7 containing product?

8 MR. BERNICK: Again, Your Honor, that presumes that
9 he, a) can set that to one side; b) we would then find out what
10 he had to set to one side; and, c) to the extent that it's
11 Grace, Grace's materials are independently protected by little
12 Romanette iii of the stipulation.

13 THE COURT: No. The question was, any solvent
14 defendant in the tort system. I think we can assume that Grace
15 is, a) not a solvent defendant --

16 MR. BERNICK: No.

17 THE COURT: -- and, b) not in the tort system at the
18 moment.

19 MR. BERNICK: But that's not true. It's the materials
20 that were provided that is the -- this witness was provided
21 with materials during the -- that relate back to the period of
22 time in which Grace was in the tort system.

23 THE COURT: Wait. Are we talking currently?

24 MR. BERNICK: Yes.

25 THE COURT: The question was are you aware,

Florence - Cross/Finch

139

1 currently, of any solvent defendant in the tort system.

2 MR. BERNICK: Today? Yes.

3 THE COURT: Yes. That's the question.

4 MR. BERNICK: If that --

5 BY MR. FINCH:

6 Q Without relying on any confidential information, Dr.
7 Florence, are you aware of solvent defendant in the tort system
8 that restricts its payments in mesothelioma cases just to
9 people who personally mix or personally install an asbestos
10 product?

11 THE COURT: You may answer that.

12 BY MR. FINCH:

13 A I think, as I said in my deposition, I'm not really an
14 expert on what all the solvent defendants do in terms of the
15 negotiation posture but I think an answer, I'm not aware of
16 any, though I'm not aware of a lot in that regard.

17 Q Okay. Now, sticking with your expert report, the lung
18 cancer criteria --

19 THE COURT: The second one or the first one?

20 MR. FINCH: The second.

21 THE COURT: All right.

22 MR. FINCH: The second one. The one dated September
23 25, 2007.

24 THE COURT: Okay. Thank you.

25 BY MR. FINCH:

Florence - Cross/Finch

140

1 Q The minimum causation criteria for lung cancer is number
2 three on Page 2, correct, Dr. Florence?

3 A Correct.

4 Q It says, "Minimum causation criteria for lung cancer
5 claims of diagnosis of asbestos based on the B-reader report of
6 a reliable B-reader, and a reproducible ILO score of 1/0 or
7 greater," correct?

8 A That's correct.

9 Q Isn't it true that Grace's assumed criteria do not allow
10 for the possibility that the claimant could have a qualifying
11 lung cancer claim based on pathology as opposed to X-rays?

12 A With regard to our estimate?

13 Q Yes.

14 A No, they could. In fact, I was rereading my deposition
15 and I think I must have misunderstood your question then. What
16 we did, and I think what this handwritten chart covered, was if
17 a claimant said they were relying on pathology evidence, then
18 we assumed that that evidence -- though it was not specifically
19 reviewed, we assumed that that evidence would qualify at the
20 same rate that the X-ray evidence would have qualified.

21 Q Okay.

22 A So, to that extent, the pathology evidence would have been
23 accepted.

24 MR. FINCH: Can I have the ELMO, please?

25 (Pause)

Florence - Cross/Finch

141

1 BY MR. FINCH:

2 Q So you assumed that, for people who were relying on
3 pathology, they would only qualify at the same rate as the
4 people who were relying on X-rays, the 8.6 percent rate,
5 correct?

6 MR. BERNICK: Objection to the form of the question.

7 The little header that you have there doesn't say anything
8 about pathology. If you want to display that document, I think
9 the witness' -- the question to the witness should change.

10 MR. FINCH: Your Honor, he just testified that the
11 people who qualified based on pathology would qualify at the
12 same rate as the people who qualified for X-rays.

13 BY MR. FINCH:

14 Q Isn't that right, Dr. Florence?

15 MR. BERNICK: That's not the point, Your Honor. The
16 category is -- the 8.6 percent is applied to the category, not
17 to the pathology specifically.

18 BY MR. FINCH:

19 Q Dr. Florence, what percentage of people who were relying
20 on pathology did you assume would qualify?

21 A We assumed that, meeting the other criteria, that if the
22 reliance was on a pathology report, they would be qualified at
23 the same rate, the 8.6 percent, as the individuals that had
24 X-ray proof.

25 Q So is it correct that --

Florence - Cross/Finch

142

1 A Reproducible X-ray proof.

2 Q So you were assuming that only 8.6 percent of the people
3 who said their lung cancer was related to asbestos based on
4 pathology would qualify?

5 A That's correct.

6 Q Did you hear Dr. Weill's testimony that pathology was the
7 gold standard for diagnosing asbestosis?

8 A I did not -- was not present for Dr. Weill's testimony.

9 Q Are you aware that if something is diagnosed based on
10 pathology, there is no dispute that the asbestosis is present?

11 A I was not present for Dr. Weill's testimony. Correct.

12 Q Who told you to use the 8.6 percent for the people who
13 were relying on pathology?

14 A I think that was a judgment that we made.

15 Q I take it you didn't discuss that with Dr. Weill or any of
16 the medical experts?

17 A I did not discuss it with Dr. Weill.

18 Q To the extent that there are differences in the criteria
19 that Grace required before making payments on a claim prior to
20 the time it went into bankruptcy and the criteria that you've
21 been asked to apply now, you made no attempt to reconcile the
22 two in your report, correct?

23 MR. BERNICK: Can I have the question read back,
24 please?

25 MR. FINCH: There's no read-back. I'll just repeat

Florence - Cross/Finch

143

1 the question.

2 Q To the extent that there were differences in the criteria
3 that Grace used to pay claims before it went into bankruptcy
4 and the specified assumptions you were asked to assume here,
5 you made no attempt to reconcile the two in your report,
6 correct?

7 A That's correct. Our job was to estimate the number of
8 claims that would meet the criteria and what those claims'
9 value might be.

10 Q And you haven't done any analysis as to whether Grace paid
11 any historically settled claims using the specified criteria
12 that you've been asked to assume here as a prerequisite to
13 payment, have you?

14 THE COURT: I'm sorry. I apologize, Mr. Finch.

15 MR. FINCH: Sure.

16 THE COURT: I need this one -- did no analysis to see
17 --

18 BY MR. FINCH:

19 Q You have done no analysis of whether Grace used the
20 specified criteria that you're applying here as a prerequisite
21 to paying money to resolve claims in the tort system?

22 A I have done no analysis of Grace's methods for paying
23 claims in the tort system. In other words, what analysis they
24 may have done on those claims did not fall within the scope of
25 what I was asked to do.

Florence - Cross/Finch

144

1 Q Okay. And it's correct that you did not attempt to
2 estimate the liability for pending and future asbestos claims
3 that Grace would face if it had continued in the tort system
4 after April 2001, correct?

5 A I was not asked to estimate if they had continued in the
6 tort system. That was not an assumption. Correct.

7 Q And you don't have any opinion as to what Grace's
8 liability for pending and future asbestos personal injury
9 claims as of April 2001 would be if it hadn't gone into
10 bankruptcy?

11 A I haven't done that analysis. No, I don't have an
12 opinion.

13 MR. FINCH: Can I have the ELMO?

14 (Pause)

15 BY MR. FINCH:

16 Q Okay. You were asked some questions by Mr. Bernick about
17 the data that you rely on in two different situations. Do you
18 recall this graphic?

19 MR. FINCH: And, for the record, it's GG-2310.

20 BY MR. FINCH:

21 A I do.

22 Q Okay. First of all, the first one, Future Trust Funding,
23 isn't it correct that what you used the TDP analysis for is not
24 to determine the amount of funding that goes into the trust but
25 to determine the payment percentage that the trust would pay

Florence - Cross/Finch

145

1 out on claims, given the relationship between its assets and
2 projected liabilities?

3 A Correct. I think that's what I tried to say. I may not
4 have said it very artfully.

5 Q Okay. So if we struck Funding from this and instead put
6 Future Trust estimated payment percentage, that would be
7 accurate, correct?

8 A I believe so. Yes.

9 Q Okay. Now, for trusts --

10 A I'm sorry. The only clarification would be this graphic
11 has two options that have Trust and Tort. And I guess -- I'm
12 not quite sure where bankruptcy would fall so --

13 Q Okay. But for --

14 A It could fall under trust; it could fall under -- I don't
15 know. I guess it can't fall under tort so --

16 Q You've done two types of estimates historically in your
17 career. One is to estimate the future tort system costs of
18 some asbestos defendant, correct?

19 A We've estimated tort system costs. Correct.

20 Q Right. And you didn't do that work here in this case,
21 this estimation case?

22 A That's correct. We didn't.

23 MR. BERNICK: I'm sorry. The question presumes, by
24 tort system, this has been used in a very general kind of way,
25 a return to the state court administered tort system. That's a

1 clear question.

2 BY MR. FINCH:

3 Q By tort system, I mean that Grace would continue to
4 resolve the cases in whatever form it found itself in for
5 litigating asbestos personal injury claims, whether it's state
6 courts or federal courts, wherever the cases were pending at
7 the time it went into bankruptcy.

8 MR. BERNICK: Objection. That's a misleading
9 question that lacks foundation.

10 THE COURT: I am not certain what that question
11 means.

12 BY MR. FINCH:

13 Q Dr. Florence, what do you mean by future tort system
14 costs?

15 A That would be the cost that a defendant might incur by
16 settling or litigating claims in the tort system --

17 Q And what do you mean --

18 A -- in the future.

19 Q What do you mean by the tort system?

20 A In the court system.

21 Q In the courts in which the cases historically are pending,
22 correct?

23 A In the court system, whatever that may be; federal, state,
24 city. I make no distinction.

25 Q Okay. Now, for the future trust projections, what you're

Florence - Cross/Finch

147

1 doing is trying to estimate the cost that a trust would incur
2 to resolve claims over time in the future, correct?

3 A I'm usually trying to estimate -- right -- the volume, the
4 timing, and the cost of resolution of claims against the trust.

5 Q Okay. And here you have drivers of payments, you have
6 claims data, and you have criteria. The TDP criteria, that's
7 not an assumption, that's the rules that the trust says, we
8 will pay these claims and not pay those claims, correct?

9 A Correct. The TDP usually specifies, obviously sometimes
10 with verbiage, what should be paid and what shouldn't be paid.

11 Q Okay.

12 A And so those are the criteria.

13 Q Okay. And the claims data under the TDP, once a trust has
14 had its doors open for a couple of years, you have empirical
15 data as to how many claims got filed against the trust and how
16 many of them got paid by the trust, correct?

17 A We do. We would have data on, in essence, the equivalent
18 of claims history for the trust.

19 Q Okay. And so you would have empirical data as to the
20 claims history and empirical data as to the criteria where a
21 trust has been in operation for some period of time and you
22 would use that to project the future liability of the trust,
23 correct?

24 A Correct.

25 Q Okay. And for trusts that just open their doors, the ones

Florence - Cross/Finch

148

1 that -- say, the Federal Mogul Trust, if it opens its doors in
2 three months or something, the TDP criteria are -- they're not
3 an assumption; they're a given? I mean, they are -- there is
4 empirical data as to what the TDP are, correct?

5 A The TDP are assumptions.

6 Q Well, they're not assumptions? They are criteria that the
7 trust will follow? You have those criteria, correct?

8 A That's right. Those are specified.

9 Q Okay. And then where do you get the claims history for a
10 trust that hasn't yet started operation yet?

11 A Well, for a trust that's just opening its doors, you try
12 to get it from the claims history up until that time.

13 Q The claims history of the company prior to the time it
14 went into bankruptcy?

15 A Correct.

16 Q Okay. For future tort system costs, you have claims data.
17 What does that refer to?

18 A Which one? Trust or --

19 Q Future tort system costs claims data. What does that
20 refer to, Dr. Florence?

21 A That would be the history of the defendant in the tort
22 system as reflected in the information about the claimants and
23 the status of those claims and the outcome of the claims.

24 Q And that's empirical data, correct?

25 A It is.

Florence - Cross/Finch

149

1 Q That's not an assumption, correct?

2 A The data is an empirical base. Correct.

3 Q Okay. And then you have the criteria that the defendant
4 actually applied to resolve claims in the tort system, correct?

5 A Sometimes you do and sometimes you don't. Sometimes it's
6 a black box process and sometimes it's more clear than others.

7 Q Okay. But -- I think I wrote this down -- sometimes you
8 know what the criteria are; i.e., we will pay mesothelioma
9 claims if they meet the following criteria, and they have that
10 in a settlement agreement and sometimes you don't know that and
11 you can see the outcome of what applying those criteria would
12 do, correct?

13 MR. BERNICK: I object to the form of the question.
14 Also, I think the question assumes that those are the only two
15 alternatives.

16 BY MR. FINCH:

17 Q What did you mean, Dr. Florence, about the outcome of
18 applying the criteria where it was a black box to you?

19 A There may be instances where you don't know -- either you
20 don't know the specific criteria that was used against -- in
21 evaluating a specific claim or a group of claims. And in that
22 instance, all you know is this group of claims had these
23 characteristics and they were paid or not paid a particular
24 amount of money. I mean, so it's -- in essence, you may not
25 know specifically what the criteria were in judging those

Florence - Cross/Finch

150

1 claims but you know that they were closed or closed for some
2 amount of money.

3 Q Okay. So you know what percentage of them got paid, for
4 example? You can tell that, right?

5 A Well, sure. You can find out what percentage of claims
6 are paid but I guess the distinction I was trying to draw is
7 there may be groups of claims, segments of claims, in this
8 claims history, some of which you know the criteria for, some
9 of which you don't know the criteria for, some of which all you
10 know is the outcome of the claim.

11 Q But for all of them, whether you know the criteria or not,
12 you have empirical data as to the outcome of the company's
13 application of whatever criteria it was using to resolve
14 claims, correct?

15 MR. BERNICK: Objection. Lack of foundation. This
16 is a very abstract --

17 MR. FINCH: He just testified to it on direct, Your
18 Honor.

19 THE COURT: Yes. Overruled.

20 MR. BERNICK: No, that's not what he testified to --

21 THE COURT: I think that's clear enough.

22 MR. BERNICK: -- but go ahead.

23 THE COURT: You may answer, Dr. Florence.

24 BY MR. FINCH:

25 A I'm sorry.

1 THE COURT: Whether you have empirical data for the
2 outcomes of all the claims.

3 BY MR. FINCH:

4 A You usually have -- you usually have data on what the
5 status of the claim is and, if the claim is closed, you usually
6 have data on whether it was closed for money or -- and, if so,
7 how much, or whether it was not closed for money.

8 Q And from that, you can calculate what percentage
9 historically of claims the defendant paid money to resolve,
10 correct?

11 A You could. You could calculate a simple percentage.

12 Right.

13 Q And that's -- and you can calculate what the average value
14 of the claims that got paid, received from that defendant,
15 correct?

16 A Sure.

17 Q And those two parameters, the percentage of claims that
18 get paid and the value paid to those claims, that's empirical
19 data that you can analyze? It's not an assumption, correct?

20 A Well, with regard to criteria, I guess you're making the
21 underlying assumption that there was commonality in the
22 criteria that was used, whatever they were.

23 Q And generally speaking, in estimating the future tort
24 system costs of a defendant, you assume going forward there
25 will be -- they will apply the same criteria they had

1 historically, correct?

2 MR. BERNICK: I'm sorry. Was the question you will
3 assume?

4 BY MR. FINCH:

5 Q That you -- in making a forecast for a tort system
6 defendant, you look to the past history of what percentage of
7 claims they paid and how much they paid them for, correct?

8 A That's one of the things you look at. Sure.

9 Q And then, to estimate the liability going forward, you
10 project that cost by using the empirical data you have as to
11 the historically closed claims as the basis for making the
12 forecast?

13 A Well, I think I agree, with the understanding that that
14 may not be true for all of the claims. In other words, in the
15 tort system, we've frequently been in situations where, as an
16 assumption, the client may say, we have this going on for this
17 attorney, or we have this agreement in this jurisdiction, and
18 therefore it's -- the simple average calculation of what we
19 paid for the last six months or the last six years in this
20 state is not applicable. Or we have a settlement agreement
21 with the Florence firm and the Florence firm specifies these
22 criteria in this amount of money. So I guess in answer to your
23 question, in general, you look to the history and then the
24 criteria. Some of those criteria are explicit, like the ones
25 I've given you. Some of the criteria are kind of black box and

Florence - Cross/Finch

153

1 all you know is some criteria was applied and I know the result
2 of those criteria.

3 Q And you rely on the company's historical experience in the
4 tort system for making an estimate of what its liability would
5 be in the tort system because it's an empirical demonstration
6 of what has actually happened with that company, correct?

7 MR. BERNICK: Objection to the form of the question.

8 Actually happened to that company in what regard?

9 MR. FINCH: In the tort system.

10 MR. BERNICK: Well, that's the same problem. It's
11 the same problem.

12 THE COURT: That is the same problem.

13 MR. BERNICK: And at this point, Your Honor, I think
14 that there have been 25 minutes worth of questions all dealing
15 with the methodology that he's already testified to on direct
16 examination.

17 THE COURT: That's proper cross examination. If they
18 want to spend 25 minutes on methodology, they're permitted to
19 do it. But I do believe that there is a problem with the
20 question the way it was asked. Please rephrase the question.

21 BY MR. FINCH:

22 Q Isn't it true, Dr. Florence, that you rely on the
23 company's historical experience in the tort system for making
24 an estimate of what its future liability would be in the tort
25 system because the historical experience is an empirical

Florence - Cross/Finch

154

1 demonstration of what actually happened with respect to that
2 company?

3 MR. BERNICK: It's the exact same question that he
4 asked two minutes ago and it's still defective.

5 MR. FINCH: It's not the same question, Your Honor.

6 THE COURT: Well, it changed to, isn't it true, so
7 it's not the exact same question but I think the purpose is the
8 same. But I think that there are a lot of assumptions that I
9 haven't heard this witness testify to. He is an expert but I
10 think you have to get him to agree with the assumption. I
11 haven't heard him testify to all of the assumptions that you
12 have put into this question.

13 BY MR. FINCH:

14 Q When you are -- these are the places where you have
15 testified as an expert on estimating asbestos liabilities, Dr.
16 Florence?

17 A That's correct.

18 Q In Babcock and Wilcox, you estimated the company's
19 liability for asbestos claims twice, correct?

20 A I did.

21 Q And in each case, you relied on the company's past history
22 as -- in terms of the percentage of claims paid and the value
23 of the claims that were paid in making your projections,
24 correct?

25 A Correct. We were asked to assume that, in both instances,

Florence - Cross/Finch

155

1 that the company would have been in the tort system, would not
2 have been in bankruptcy and would be settling claims in the
3 tort system.

4 Q Okay. And other than that one assumption --

5 A And we used --

6 Q -- that the company would --

7 MR. BERNICK: Could the witness please finish his
8 answer?

9 MR. FINCH: Sure.

10 BY MR. FINCH:

11 A We used the historic experience up until that time as a
12 reflection of that base that I was talking about earlier, that
13 base experience up to the time that we were asked to make the
14 forecast.

15 Q And other than the one assumption that you were to assume
16 that the company would still be in the tort system, you were
17 not told any other assumptions to apply to estimate the
18 liability, correct?

19 MR. BERNICK: In which case?

20 MR. FINCH: Babcock.

21 MR. BERNICK: Fraudulent conveyance or --

22 MR. FINCH: Yes.

23 MR. BERNICK: -- information?

24 MR. FINCH: Both.

25 THE COURT: Well, let's take them one at a time.

Florence - Cross/Finch

156

1 MR. FINCH: Okay.

2 BY MR. FINCH:

3 Q Let's take the fraudulent conveyance case.

4 (Pause)

5 A I'm sorry, Mr. Finch. I don't -- I can't recall whether
6 we were given additional assumptions in either one of those.

7 Q In Armstrong -- you testified in the Armstrong
8 confirmation hearing about two years ago, correct?

9 A I did.

10 Q And there your estimate of the liability was based on the
11 company's past history of resolving cases in the tort system?

12 A It was based on the assumption that the company would have
13 remained in the tort system and not filed for bankruptcy.

14 MR. FINCH: One moment, Your Honor.

15 (Pause)

16 MR. FINCH: May I approach the witness, Your Honor?

17 THE COURT: Yes. Mr. Finch, may I ask the witness to
18 clarify something for me, please? Dr. Florence, the question
19 you're being asked is whether you were making -- you were
20 testifying based on the assumption that the company's past
21 history of resolving claims in the tort system. The question
22 you're answering is that you were told to assume the company
23 would remain in the tort system. Are they the same thing?

24 THE WITNESS: (No audible response).

25 THE COURT: I just want to make sure that you're --

Florence - Cross/Finch

157

1 that in answering this, that you're either -- that you're
2 saying yes. I'm not sure if you're saying yes and then going
3 on or if you're saying no and going on. So I just would like
4 to know whether the question and the answer are the same.

5 THE WITNESS: Maybe I should hear the question again
6 to make sure I'm answering the right question.

7 THE COURT: All right. Thank you. Would you repeat
8 that question for me, Mr. Finch?

9 MR. FINCH: Which one?

10 THE COURT: Either one. The question was, when he
11 testified in AWI at the confirmation hearing, he was told to
12 estimate liability based on the assumption of the company's
13 past history of resolving cases in the tort system. Exactly
14 how you phrased it, I can't say, but the witness did not answer
15 using the same words you did. I want to make sure that the
16 answer and the question are the same, if they are.

17 MR. FINCH: Okay.

18 BY MR. FINCH:

19 Q Dr. Florence, do you have the Armstrong report in front of
20 you?

21 A I do.

22 Q Okay. And in that case, you estimated what Armstrong's
23 liability would be as of the bankruptcy petition date, correct?

24 A Correct, if they remain in the tort system.

25 Q If they remain in the tort system. And with that

Florence - Cross/Finch

158

1 assumption, if they remain in the tort system, you estimated
2 their liability to be north of \$4 billion, correct?

3 A I did.

4 Q Okay. Is it correct that the way in which you estimated
5 Armstrong's liability for pending and future asbestos claims
6 was to estimate -- the future claims were valued using the
7 average settlement value incurred by Armstrong to resolve
8 claims in 1999 to 2000, on Page 2?

9 MR. BERNICK: Your Honor, I -- if he's now being
10 asked what he was told to do, I really don't know what in the
11 world relevance that --

12 MR. FINCH: Let me pick that up. o

13 BY MR. FINCH:

14 Q Dr. Florence, were you --

15 MR. BERNICK: Excuse me. Is the question withdrawn?

16 MR. FINCH: The question is withdrawn.

17 BY MR. FINCH:

18 Q Dr. Florence, other than the assumption that Armstrong did
19 not go into bankruptcy, were you told by your client how to go
20 about estimating the liability?

21 A I may have been given assumptions about the case load. In
22 other words, there were questions about -- that we may have had
23 about the historic filings and, as I mentioned before, patterns
24 we might have seen in the historic filings, trying to
25 understand that. And if a client said this was a result of a

1 moratorium, this was a result of a settlement agreement, those
2 would be assumptions that we would have accepted going forward.

3 Q But you don't know -- you don't recall being given any of
4 those assumptions by --

5 A I don't remember in Armstrong's case.

6 Q And, in Armstrong, you used the company's past history to
7 project the liability?

8 A Correct. I used their past historic experience, right, in
9 the tort system.

10 Q And your client in that case was the future claimant's
11 representative, correct?

12 A It was. But I guess -- that's not what I'm being asked to
13 do here. I'm being asked to estimate the claims that are
14 qualified under certain criteria so I guess that's where I'm
15 having trouble. I --

16 Q You don't have any empirical evidence that Grace ever
17 resolved a single asbestos claim using the criteria you've been
18 asked to assume here, correct?

19 A I don't know what criteria Grace may have used
20 historically. I think I testified to that earlier.

21 Q In Armstrong though, you had empirical evidence as to the
22 outcome of the criteria that whatever criteria Armstrong
23 applied historically, correct?

24 THE COURT: I'm sorry. Would you -- for me, would
25 you repeat that?

Florence - Cross/Finch

160

1 MR. FINCH: Sure.

2 BY MR. FINCH:

3 Q In Armstrong, you had -- Armstrong had a set of criteria
4 that it applied historically to resolve cases, right, Dr.
5 Florence?

6 A I assume they did.

7 Q Okay. And you had empirical evidence of the outcome of
8 their application of those criteria, correct?

9 A I had the -- I had historical experience or empirical data
10 on the outcome of their settlement or their tort system
11 experience, presumably using some criteria. I don't know what
12 those criteria were or how they may have changed over time.

13 Q And you estimated the liability -- when you estimated the
14 liability, you assumed that Armstrong would continue to apply
15 in the future the same criteria it applied historically,
16 correct?

17 A By necessity, since we didn't know other than if there
18 were some pockets that we knew about, the assumptions that I
19 was saying about.

20 MR. BERNICK: I have to object at this point. There
21 is a clear lack of foundation with respect to Armstrong in
22 particular. We've got the witness talking about a case where
23 he has just said he doesn't recall exactly what went into that
24 case and particularly, as Mr. Finch well knows, on the last
25 question, what he's now asked the witness to verify is an

Florence - Cross/Finch

161

1 impossibility. Again, Your Honor, I don't know --

2 THE COURT: Okay. That objection is simply overruled
3 because the witness basically has already answered the
4 question, saying that he was using the information that was
5 given to him and has no other information about criteria.

6 BY MR. FINCH:

7 Q All right. In your report at Page 1 in this case --

8 THE COURT: This is Exhibit 462?

9 MR. FINCH: Exhibit 462.

10 BY MR. FINCH:

11 Q In May of 1997, ARPC was again asked to estimate the
12 volume, cost and timing of pending and future claims for
13 asbestos related injuries filed against Grace? Do you see
14 that, Dr. Florence?

15 A I do.

16 Q And you write later, "As before, the estimate was based
17 solely on Grace's tort system experience"?

18 A Yes.

19 (Pause)

20 MR. FINCH: Your Honor, may I approach the witness?

21 THE COURT: Yes.

22 (Pause)

23 MR. FINCH: 175, Dave. May I approach the witness,
24 Your Honor?

25 BY MR. FINCH:

Florence - Cross/Finch

162

1 Q Dr. Florence, I have put what has been marked ACC-109 in
2 front of you.

3 MR. BERNICK: Do you have an extra copy of that made?

4 MR. FINCH: We have an extra copy.

5 BY MR. FINCH:

6 Q Dr. Florence, do you recognize ACC-109? Beginning on the
7 second page is a report you prepared for Grace in May of 1997?

8 THE COURT: This isn't in the binder. This report --

9 MR. FINCH: Oh. May I have another copy, Dave?

10 THE COURT: The AWI report wasn't either, if you're
11 marking it. Thank you.

12 MR. FINCH: We could also have the ACC --

13 THE COURT: Thank you.

14 BY MR. FINCH:

15 Q Dr. Florence, do you recognize ACC-109 as the report you
16 prepared for Grace in May of 1997?

17 A This looks like a -- it looks like our report that was
18 prepared in '97.

19 Q And you -- the scope of your engagement in 1997 was to
20 estimate Grace's liability for pending and future asbestos
21 claims?

22 A I think so. Let me just look at -- I didn't prepare this
23 report. This was prepared by one of my associates.

24 (Pause)

25 A Yes. This looks like a report of an estimate of pending

Florence - Cross/Finch

163

1 and open claims and a forecast of claims to be filed against
2 Grace.

3 Q Okay. Could you turn to the page that's marked 79-0534?

4 A Yeah.

5 MR. BERNICK: Your Honor, I would object to this.
6 Again, it's beyond -- it's precluded by the stipulation. This
7 is an exhibit to the Beber (phonetic) deposition and also to
8 the Poser deposition. It actually is a document produced from
9 Grace's files. If it came to the attention of this witness, it
10 did so from Grace and therefore is picked up by the
11 stipulation.

12 MR. FINCH: Your Honor, this -- Dr. Florence and his
13 partner -- let me lay a foundation.

14 BY MR. FINCH:

15 Q Dr. Florence, Dan Rorke (phonetic) works for AR -- at the
16 time this report was written, you and Dr. Rorke both worked for
17 KPMG?

18 A We did. Right.

19 Q And you were asked by W.R. Grace to prepare forecasts of
20 the volume and timing of future claims for asbestos related
21 injuries expected to be filed against Grace and the costs
22 associated with disposal of those claims?

23 A KPMG? Yes.

24 Q Yes. And you prepared this report? It didn't come from
25 you -- to you from Grace in the first instance? You prepared

Florence - Cross/Finch

164

1 it and gave it to Grace, correct?

2 A I didn't prepare this report but KPMG prepared the report.

3 Q KPMG prepared the report and KPMG was authorized to do the
4 work on behalf of Grace, correct?

5 A KPMG was retained by Grace to do the work. Yes.

6 Q And there was a letter that you prepared that went to
7 Wachtell Lipton that summarizes the results of this report,
8 correct?

9 A I don't recall the letter but --

10 MR. FINCH: John, can we show ACC-175, the last page?
11 Next to the last page. Sorry.

12 BY MR. FINCH:

13 Q Is that your signature on Page 25-1634, Dr. Florence?

14 A It is.

15 Q And could you turn to Page 24-1632?

16 MR. BERNICK: I don't have this document.

17 MR. FINCH: The only copy I have is with me. I'm
18 just going to use this document on the screen. Can you see it
19 on the screen?

20 MR. BERNICK: No, not particularly but go ahead.

21 We'll see how far we get.

22 THE COURT: No one can see it on the screen.

23 MR. FINCH: Can you blow it up, John? Make it
24 bigger? The first one, estimating bodily injury liability.
25 Can you see that, Your Honor?

Florence - Cross/Finch

165

1 THE COURT: Yes.

2 MR. FINCH: Okay.

3 BY MR. FINCH:

4 Q You write in this -- do you know Mr. Wilensky (phonetic),
5 Dr. Florence?

6 A I'm sorry. Which Wilensky? Is this the addressee to the
7 letter?

8 Q Yes.

9 A I met him. Yes.

10 Q He's a lawyer for -- he was a lawyer acting for W.R. Grace
11 in 1997, correct?

12 A I met him. Yes.

13 Q Okay. Now, what this -- what you write here is, "The
14 estimate of indemnity arising from BI claims is obtained by" --
15 and then you describe the steps that you follow, one, two,
16 three, four, correct?

17 A Correct.

18 Q Okay.

19 A I see that.

20 Q The -- now, computing indemnity for an injury category is
21 the product of three factors. The sum of the number of pending
22 claims --

23 MR. BERNICK: Objection. I would object. I would
24 object to this document being read. I object to the witness
25 being confronted with this document. I object to the witness

1 being confronted with the document this is ancillary to.
2 Paragraph Romanette iii of the stipulation specifically
3 precludes any oral or written communication between an expert
4 witness, i.e., Dr. Florence, and the expert's witness
5 assistants or more than -- or one or more attorneys for the
6 party offering the testimony. The attorneys in this case are
7 the Wachtell Lipton firm. They are counsel for Grace. The
8 underlying document is a document communicated between Mr.
9 Florence's firm and Grace and counsel for Grace. All of them
10 are specifically picked up in the stipulation and they are
11 specifically barred. And I will note that when it comes to Dr.
12 Peterson, I took his deposition. It turns out he did earlier
13 analyses of Grace back in the 1990's and I didn't see those.
14 Why? Because they were not relied upon in connection with this
15 case.

16 And I will further add we are now over an hour into
17 the examination, an hour and fifteen minutes of the
18 examination. We were given a total estimate of two and a half
19 hours for the cross examination of this witness. And all
20 that's happened so far is that Mr. Finch has wanted to pursue
21 his case through this witness. He's got other people that can
22 pursue it. It's not proper examination for this afternoon.

23 MR. FINCH: Your Honor, the estimates of cross were
24 dependent upon lack of -- it was on the assumption there
25 wouldn't be a lot of time on speaking objections and colloquy

Florence - Cross/Finch

167

1 with the Court. This is not picked up by the expert
2 stipulation. This document was produced to the United States
3 Government. It's a no sense confidential and I'm establishing
4 that when Dr. Florence estimated Grace's liability in the past,
5 he used a methodology very similar to that used by Dr. Peterson
6 and Dr. Biggs. And I believe that is highly relevant. It's
7 not precluded by the stipulation.

8 THE COURT: Wait. This letter between an expert
9 witness and counsel was submitted to the Federal Government and
10 that's how it came into the ACC's possession?

11 MR. FINCH: It came into the ACC -- it was produced
12 in discovery to the ACC. It was turned over to the Federal
13 Government in response to a subpoena. There is no
14 confidentiality whatsoever left with respect to this document.

15 MR. BERNICK: Your Honor, what happened was, it was
16 turned over in connection with the Sealed Air litigation. It
17 was turned over pursuant to a protective order. The Federal
18 Government then subpoenaed documents from Grace, including
19 these documents, and they were turned over to the Federal
20 Government in connection with their subpoena and the ACC and
21 the FCR now take the position that that was a waiver. Mr.
22 Finch specifically told me before he used such a document he
23 would alert us and that's why we don't have any copies --

24 MR. FINCH: I would --

25 MR. BERNICK: Excuse me -- we don't have copies of

Florence - Cross/Finch

168

1 this document here this afternoon. This is yet another
2 dimension of why it is foreclosed under the stipulation. It is
3 a communication under Romanette iii between the witness, the
4 expert, and Grace through its counsel, that is not relied upon
5 in connection in connection with this.

6 MR. FINCH: Your Honor, I would offer ACC-175 and
7 ACC-109.

8 THE COURT: At this point, I have no foundation for
9 any of these documents. I don't -- I mean, this witness
10 specifically has indicated that although he worked for KPMG
11 with respect to 109 -- I don't even know what 175 is yet. I
12 don't think the witness has said anything about it except a
13 part of it, I think, includes a letter that he signed. I
14 apologize if there's something more. He did say he signed a
15 letter.

16 MR. FINCH: Let me lay a foundation.

17 BY MR. FINCH:

18 Q Dr. Florence, you did work in 1997 that resulted in an
19 estimate of Grace's asbestos liability, correct?

20 THE COURT: For what purpose, Mr. Finch?

21 MR. FINCH: For purposes of projecting the future
22 costs of asbestos claims in the tort system.

23 BY MR. FINCH:

24 Q Correct?

25 MR. BERNICK: Well, actually, the witness can testify

Florence - Cross/Finch

169

1 he knows -- Mr. Finch well knows this was done specifically for
2 the Sealed Air transaction. That's what it was done for.

3 THE COURT: That, I think, is the problem. I mean,
4 if one thing is clear in Babcock and Wilcox and some of the
5 other cases, the estimates of liability done for particular
6 purposes are not necessarily based on the same evidence or
7 subject to the same standards as estimates done for other
8 purposes. Could we get to the purpose for which this one is
9 done? If you want to ask this witness specifically what he's
10 done in the past to estimate liabilities, why don't you do it?
11 Why do we need to get into the documents that are not
12 themselves the evidence of this witness's testimony anyway and
13 avoid the problems with respect to the confidential nature of
14 these potential documents and the issues with respect to the
15 stipulation? We don't need to be creating all these issues
16 when you can ask the witness a direct question.

17 MR. FINCH: Your Honor, that's fine, but these
18 documents are, in my view, 801(d)2 admissions of W.R. Grace as
19 to a methodology for estimating the cost of future asbestos
20 claims.

21 THE COURT: For purposes of filing something on,
22 what, a 10K with respect to the fraudulent conveyance
23 litigation? For what purpose?

24 MR. FINCH: For purposes of analyzing the total size
25 of their aggregate asbestos liability as a particular point in

Florence - Cross/Finch

170

1 time. It is our view of the case law that the amount that you
2 have to estimate is what the liability would be if the company
3 had not gone into bankruptcy. That's the liability that's
4 channeled to the trust.

5 THE COURT: That wasn't in 1997.

6 MR. FINCH: The liability in 1997, though, the
7 methodology they followed in 1997, is relevant to the question
8 of whether the methodology they are asking you to accept now is
9 reliable or relevant.

10 THE COURT: Ask him what methodology he used for that
11 purpose.

12 MR. FINCH: Okay.

13 THE COURT: Why do we need to get into issues with
14 respect to possible breaches of the stipulation and the
15 confidential nature of documents when you've got the witness on
16 the stand who apparently did some of the work? Ask him what
17 methodology he used.

18 BY MR. FINCH:

19 Q Dr. Florence, did you do some of the work with respect to
20 the 1997 estimate of Grace's liability?

21 A I don't believe I did. No.

22 Q You oversaw the work, correct?

23 A I probably reviewed the report before it went out.

24 Q And that estimate of the liability was based solely on
25 Grace's experience in the tort system, correct, as you say in

Florence - Cross/Finch

171

1 your report here, on Page 1?

2 THE COURT: Which report?

3 MR. FINCH: His report that he is -- for the
4 estimation. 462.

5 THE COURT: Okay.

6 BY MR. FINCH:

7 A I'm sorry. I'm lost, guys.

8 Q Page -- Exhibit 462. You have that in your notebook.
9 Page 1.

10 THE COURT: It's Tab No. 2, Dr. Florence.

11 BY MR. FINCH:

12 A I do have 462.

13 Q And ARPC estimated the total pending and future liability
14 of Grace as of May 1997 and, as before, the estimate was based
15 solely on Grace's tort system experience? Do you agree with
16 that?

17 A Correct. The firm did that.

18 Q And in December 2000, ARPC was also asked by Grace to
19 estimate the number of future asbestos personal injury claims
20 and -- is that correct?

21 A The last paragraph there?

22 Q Yes.

23 A Correct.

24 Q And based on Grace's claims data as of December 2000, you
25 estimated there would be approximately 320,000 asbestos

Florence - Cross/Finch

172

1 personal injury claims filed against Grace from 2001 to 2039,
2 correct?

3 A That's correct.

4 Q And, again, as with all of ARPC's pre-petition estimates
5 on behalf of Grace, the estimate was based solely on Grace's
6 tort system experience, correct?

7 A Correct.

8 Q And you prepared -- strike that. The Delaware Claims
9 Facility is an entity that you are familiar with, correct?

10 A Correct.

11 Q For purposes of your first report in this case, you had
12 the Delaware Claims Facility review a sample of questionnaires,
13 correct?

14 A Grace contracted with the Delaware Claims Processing
15 Facility which was, at the time, the Celotex trust.

16 Q Okay. Is it correct that your firm selected the sample of
17 the closed claims that the Delaware Claims Facility would
18 review?

19 A That's correct.

20 Q And as part of your back-up materials in this case, you
21 identified the list of the closed claims that they reviewed,
22 that you asked them to pull?

23 A I assume we did. I assume that's the list. I mean, I
24 don't -- I wasn't aware of what was sent in on the --

25 Q You created a sample and then you produced, as part of

Florence - Cross/Finch

173

1 your back-up material, the list of the closed claim sample as
2 well as pictures of all of the files that the Delaware Claims
3 Facility reviewed, correct?

4 A Okay. I mean, I didn't produce that so I -- someone in my
5 office did.

6 Q You don't doubt that someone in your office produced that?

7 A No, I don't.

8 Q The review of the questionnaires with respect to the --
9 first of all, the Celotex trust is an entity that's in the
10 business of reviewing asbestos claims submitted to trusts,
11 correct?

12 A Correct.

13 Q And as part of that, they review medical and exposure
14 information for purposes of claim settlement, correct?

15 A Correct. We're talking about Celotex or the --

16 Q Celotex. Celotex.

17 A Yeah.

18 Q And they have familiarity with reviewing medical and
19 exposure information for purposes of seeing if they meet the
20 criteria to be applied, correct?

21 A Well, they have familiarity with reviewing medical records
22 and legal documents for purposes of collecting that type of
23 information.

24 Q You don't know one way or another whether Exponent is in
25 the business of reviewing asbestos exposure and medical

Florence - Cross/Finch

174

1 documents for purposes of deciding whether to pay or deny
2 asbestos personal injury claims?

3 A I don't.

4 Q You never relied on Exponent for purposes of reviewing
5 asbestos personal injury claims information prior to this case,
6 correct?

7 A That's correct.

8 (Pause)

9 Q Would you turn to your report in this case, 462 at Page
10 15? Do you have that, Dr. Florence?

11 A I do.

12 Q This is your counts of the -- or your estimates of the
13 number of pending claims against Grace as of the petition date,
14 at the top line?

15 A This is the number of pending claims that had proofs of
16 claim filed.

17 Q And for lung cancer claims, there were 5510 lung cancer
18 claims that filed a proof of claim form that you could match
19 back to the historical database, is that correct?

20 A There are 5510 pending claimants that we could find a POC
21 for.

22 Q Okay. And of that 5510 using the criteria that you were
23 asked to apply here, only 59 lung cancer claimants have valid
24 claims, is that correct?

25 MR. BERNICK: I'm sorry, could I have that question

Florence - Cross/Finch

175

1 read back? I -- Nate, can you just restate it?

2 Q Of the 5510 lung cancer claims that were pending on the
3 bankruptcy petition date that you could find had filed a proof
4 of claim form, using the criteria that Grace asked you to apply
5 here, only 59 of them have valid claims?

6 A Fifty-nine of them would meet those criteria.

7 Q Fifty-nine of them would meet that criteria. That's about
8 one percent?

9 A Yes.

10 Q And with respect to the mesothelioma only about 20 percent
11 of them, 19 percent of them would be valid, is that right, for
12 pending mesothelioma?

13 A Something like that, yes. It's 463 of 2426.

14 MR. FINCH: Can I have the ELMO?

15 UNIDENTIFIED SPEAKER: Yes.

16 Q This is a chart that Mr. Bernick showed you, GG2315. Do
17 you see that chart, Dr. Florence?

18 A I do.

19 Q Now, you've got a box here, not filed as of 4/01. What
20 does that refer to?

21 A Those were proofs of claim that were filed or were
22 submitted that did not have a pending claim. They had not been
23 filed with Grace prior to 4/01.

24 Q They were not filed in the sense you couldn't match them
25 back to the historical database, correct?

Florence - Cross/Finch

176

1 A Well, some we know were not filed in the sense that they
2 had dates -- filing dates that were subsequent to 4/01.

3 Q What do you mean by filing dates?

4 A There were dates indicated that the case was filed after
5 4/01.

6 Q Well, nobody could file a case against Grace after 4/01,
7 correct?

8 A I agree.

9 Q But, they -- are you talking about dates that indicated
10 they had filed the case against other people after 4/01 or
11 dates that were --

12 A There were dates that indicate they had filed against
13 Grace after 4/01.

14 Q So, there were some number of people that -- couldn't that
15 be an artifact of the database, meaning that people could have
16 filed a lawsuit against Grace prior to April of 2001 and it
17 wasn't entered in the database until some months later.

18 A I think we retained a filing date. We also had diagnosis
19 dates that were subsequent to 4/01. So, it seemed strange that
20 a case could be diagnosed after the -- and filed before but
21 diagnosed after the 4/01 date.

22 Q Well, the diagnosis date was a diagnosis date that was in
23 the questionnaires, correct?

24 A No, there would be -- we would have to have some other
25 data other than the POC to determine the diagnosis date,

1 correct.

2 Q And you don't know whether the diagnosis date that the
3 claimants were using for the questionnaire was just the most
4 recent diagnosis date or the first diagnosis date, do you?

5 MR. BERNICK: Objection to this line of questioning.
6 The question is presumably whether the case -- the complaint
7 was filed as of the date of the Grace filing. What does that
8 have to do with diagnosis dates or what's filed on the
9 questionnaire?

10 Q Dr. Florence, how many people filed non-settle proof of
11 claim forms that indicated that they had a claim against W.R.
12 Grace that you didn't consider for purposes of your analysis
13 because they fell into this box, not filed as of 4/01?

14 MR. BERNICK: Objection to the form of the question,
15 didn't consider.

16 THE COURT: Do you want to clarify didn't consider?

17 Q Didn't include as part of your base of pending claims.

18 A There were a number of claims for which -- we tried to
19 match the pending cases against the POCs. There were a number
20 of claims that we could not match a pending case to a POC. Of
21 those POCs, there were a number of POCs that were cases that
22 were POCs for settled claims, liquidated claims, claims filed
23 after the bankruptcy date, and claims we had never seen before
24 anywhere, so claims that didn't seem to have any relation to
25 Grace's historic experience.

Florence - Cross/Finch

178

1 Q Is it correct that over 100,000 people filed a proof of
2 claim form for a pending unsettled personal injury claim?

3 MR. BERNICK: Objection to the form of the question.

4 Pending in what sense?

5 Q Over 100,000 people filed a proof of claim form alleging
6 that they had a claim against Grace that wasn't settled prior
7 to petition date, correct?

8 THE COURT: I'm sorry, I thought the evidence was
9 that there were approximately 84,000 or 87. Are you suggesting
10 there were more?

11 MR. BERNICK: Yes.

12 THE COURT: Okay, I'm sorry. I apologize.

13 A You're saying how many proofs of claim were filed?

14 Q For asbestos personal injury claims.

15 A It seems to me there were somewhere around 130,000 filed
16 or something like that.

17 Q Okay. And of that number how many were settled?

18 A I don't remember the exact number but the majority of them
19 were pending.

20 Q So, over 100,000 proof of claim forms were filed for
21 pending unsettled --

22 A No, no, no, I said the majority of them were pending. Of
23 the proof of claim forms that were filed, the majority of them
24 were pending. The next largest category I believe were settled
25 or liquidated claims. And then the next largest category as